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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	
)	Supreme Court No. R-09-0044
PETITION TO AMEND)	
RULES 46-74, RULES OF THE)	AMENDED
SUPREME COURT)	Petition to Amend
)	Rules 46-74, 75, 77, and 78,
)	Rules of the Supreme Court
)	
_____)	

By Order dated December 31, 2009, this Court ordered the Petition in this matter to be opened for public comment, with an initial comment date of April 1, 2010. By that Order the Court also permitted the Petitioner, David K. Byers, Chairman of the Attorney Discipline Task Force, to file an Amended Petition on or before May 7, 2010 to address the comments, as necessary. The Task Force met in April to review all written comments filed in this matter, as well as to take additional public comment in open meetings. After considering the comments, the Task Force elected to revise its originally proposed amendments. An explanation of the major changes follows. The attached Appendix A incorporates the Task

Force's suggested revisions based on the comments and further discussion among the members. A clean copy of the revised proposal is attached as Appendix B.

Rule by Rule Explanation of Revisions

Rule 46(f). Definitions

The definition of "committee" is revised to reflect a name change for the committee, from Attorney Regulation Committee to Attorney Discipline Probable Cause Committee. The Task Force believed this name is more descriptive of the committee's function. Other revisions clarify the definitions of "disciplinary clerk," "filing," and "record." The definition of "misconduct" is revised to include "conduct that is eligible for diversion." Finally, the definition of "state bar file" is revised to eliminate "working files" as part of the state bar file.

Rule 47. General Procedural Matters

Rule 47(c), regarding service, is revised to require personal service of a subpoena on a respondent, and if personal service proves impracticable, the rule allows service by a method directed by the presiding disciplinary judge, including certified mail. Rule 47(h) is revised to provide that service of subpoenas shall be as set forth in Rule 47(c)(2) and to clarify that chief bar counsel or the chair/vice-chair of the committee has authority to issue investigative subpoenas.

Rule 47(l)(1) is revised to require an attorney to notify bar counsel upon termination of representation of a respondent prior to the filing of a formal

complaint, and 47(1)(4) is revised to limit the requirement of approval for withdrawal or substitution of counsel to “after the filing of a formal complaint.” A new section 47(1)(3) requires a notice of appearance to be filed in the supreme court.

Rule 48. Rules of Construction

Rule 48(b) is revised to clarify the applicability of the civil rules and to include Civil Rule 5(f) (placing responsibility for redaction of sensitive data in filings on the party filing the document).

Rule 48(k)(1) is revised to provide that a dismissal by the state bar or the committee at any stage, and a dismissal without prejudice by the presiding judge, does not bar further action.

Rule 49. Bar Counsel

Rule 49(a)(2)(C)(ii) is revised to clarify that the sanction of admonition with probation is posted on the website.

Rule 50. Attorney Discipline Probable Cause Committee

As previously stated, the name of the committee is changed from Attorney Regulation Committee to more accurately describe its function. Rule 50(c) is revised to permit the chief justice to appoint the chair and vice-chair of the committee instead of having committee members elect them.

Rule 51. Presiding Disciplinary Judge

Rule 51(a) includes a new provision requiring the court to periodically review and evaluate the presiding disciplinary judge's performance, as well as that of any other judges who may be appointed.

Rule 51(b) is revised to require the presiding disciplinary judge to be an active or judicial member of the state bar and to have been admitted to the practice of law for five years (the requirement of state bar membership for five years was eliminated).

Rule 52. Hearing Panels

Rule 52(b) is revised to permit the chief justice to appoint volunteer attorney and public members without a recommendation by the committee. Other revisions clarify that volunteer attorneys in the hearing panel pool may also serve as settlement officers.

The limitation on volunteer panel members serving consecutive terms in Rule 52(c) is deleted.

Revisions to Rule 52(h)(1) clarify that the hearing panel's jurisdiction over contempt proceedings does not include proceedings under Rule 47, which authority is vested in the presiding disciplinary judge.

Changes to Rule 52(h)(3) clarify the hearing panel's authority to dismiss a complaint and to order diversion.

Rule 53. Complainants

Rule 53(b)(2) is revised to provide for review by chief bar counsel or by chief bar counsel's deputy after a dismissal occurring during intake, and to provide for notification of the complainant by phone. The distinction between dismissal during intake and dismissal following a screening investigation, which requires notification by mail, is also clarified.

Rule 54. Grounds for Discipline

Rule 54(g) is revised by adding language previously found in Rule 61(c)(1) regarding the effect of receipt by the state bar of proof that a lawyer has been convicted of a felony.

Rule 55. Initiation of Proceedings; Investigation

Rule 55(a)(2)(B) is revised to permit the state bar to enter into a diversion agreement without a full screening investigation where "warranted." Language precluding diversion where there is deceit, dishonesty or actual harm to a client is deleted. Language is also added in Rule 55(a)(2)(C) to provide guidance for when to send a charge into screening ("if the alleged conduct may warrant the imposition of a sanction").

Rule 55(c)(2)(D) is revised to permit the committee to consider a respondent's previous participation in diversion in determining whether to authorize a complaint.

Rule 56. Diversion

New language in Rule 56(b) permits diversion agreements “where the conduct so warrants.” Diversion Guidelines shall be recommended by the board of governors and approved by the court.

Rule 56(b)(1) is revised to allow diversion if the state bar and the respondent agree it would be “useful,” and a new condition is added requiring that the professional misconduct not be committed intentionally.

In Rule 56(b)(3) (formerly 56(b)(2)), the reference to “willful conduct” is deleted.

Rule 57(a). Discipline by Consent

Rule 57(a)(2)(E) is revised to add a reference to Civil Rule 5(f), placing responsibility on parties to redact sensitive data from documents filed with an agreement for discipline by consent.

Rule 57(a)(4)(C), concerning rejection of agreement, is revised to require that the presiding disciplinary judge state reasons for rejecting an agreement for discipline by consent.

Rule 57(b). Reciprocal Discipline

Rule 57(b)(1) is amended to add “suspended” as a class of membership for purposes of requirement that lawyers disciplined in another jurisdiction notify the disciplinary clerk of the discipline.

Rule 58. Formal Procedures

Rule 58(k) is revised to provide that a hearing panel shall notify the parties, instead of the court, when its report will be untimely.

Rule 59. Review by the Court

The appeal process has been completely revised. Generally, new provisions are added to this rule to require notice of appeal and all briefs to be filed with disciplinary clerk, who transmits the record to the clerk of the court once the appeal is perfected and all briefs and transcripts have been filed.

Rule 59(b) is revised to track the language of ARCAP 9(a) with respect to requests for extension of time to appeal.

Rule 59(c) is revised to provide that a stay pending appeal shall be granted subject to appropriate conditions of probation and supervision, except when an interim suspension has been ordered or when the hearing panel determines no conditions of probation and supervision will protect the public.

Rule 59(d) as revised relates to transcripts. It provides that a party requiring additional transcripts for appeal must notify the disciplinary clerk of the intent to file additional transcripts and advise when the transcripts will be filed; transcripts are filed with the disciplinary clerk and served on the opposing party.

New language is added to Rule 59(h) requiring perfection of the appeal (timely filing of notice of appeal and opening brief) as a precondition for transmitting the record to the court.

New language is added to Rule 59(i) specifying that an appeal will be deemed abandoned if not fully perfected, resulting in dismissal.

New language is added to Rule 59(j) providing for transmittal of the record to the court following expiration of the time for filing appellate briefs.

Rule 60. Sanctions

Rule 60(a)(3) changes the term “censure” to “reprimand,” to conform to the nomenclature of the ABA Standards for Imposing Lawyer Sanctions.

Rule 60(b)(2)(A) is revised to provide a procedure for the disciplinary clerk to file a statement of costs and expenses, in addition to the statement filed by the state bar.

Rule 61. Interim Suspension by the Court

Revised language in 61(c)(1)(A) clarifies that a suspension will take effect after the court’s receipt of proof of a lawyer’s felony conviction, unless, within ten days, the lawyer files a motion showing good cause why the suspension should not be entered.

Rule 61(d) is revised to require the clerk of the court to serve (instead of “forward”) a copy of an order of interim suspension on the respondent, as well as on the disciplinary clerk and the state bar.

Rule 63. Transfer to Disability Inactive Status

Rule 63(b) is revised to require service on the clerk of the court of an order

transferring a lawyer to disability status or an interim order of incapacity.

Rule 64. Reinstatement; Eligibility

Rule 64(f)(1)(B)(iii), relating to the proof required for reinstatement, is revised to require a showing that the suspended member “has not had a disciplinary sanction imposed” instead of “has no disciplinary record.”

Rule 65. Reinstatement; Application and Proceedings

The requirement in Rule 65(a)(1) that application for reinstatement be accompanied by authorization to obtain information from third parties is modified to require that authorization be given to the state bar rather than the presiding disciplinary judge.

Rule 65(b)(4) is revised to eliminate language that conflicts with other provisions that require the respondent to pay costs of the proceeding up front. Broader language is added providing that the court shall reinstate the lawyer “subject to any conditions deemed necessary.”

Rule 70. Public Access to Information

A reference is added in Rule 70(b) to Rule 123 to clarify that the exceptions to public access under this rule govern in the context of lawyer discipline. New language is also added making trust account records, social security numbers, and financial account numbers confidential.

Rule 72. Notice to Clients, Adverse Parties and Other Counsel

Authority is provided in 72(d) for the presiding disciplinary judge, in addition to the court, to specify an earlier effective date for suspension or disbarment, as the presiding disciplinary judge may issue a judgment of suspension or disbarment under new rules.

Rule 74. Certificates of Good Standing

Rule 74(c) is revised to delete reference to the Attorney Regulation Committee (now the Attorney Discipline Probable Cause Committee), as that committee will not hear public disciplinary proceedings.

Rule 75. Jurisdiction; Definitions [Unauthorized Practice of Law]

The unauthorized practice of law (UPL) rules (75-78) are revised to conform to the new discipline rules. A definition of “committee” is added in Rule 75(b), and definition of “panel” or “panelist” is deleted, as the committee will determine probable cause for UPL proceedings.

Rule 77. Participants in UPL Proceedings

In Rule 77(c), a reference to the “probable cause panel or panelist,” which currently has power to issue investigative subpoenas in UPL proceedings, is replaced with “chief bar counsel or the chair or vice-chair of the committee,” to conform with Rule 47(h)(1) (investigative subpoenas).

Rule 78. Initial Proceedings (UPL)

Rule 78(b)(1) is revised to correspond with Rule 55(a), which requires the

state bar to evaluate information coming to its attention “in any form.”

Rule 78(b)(2) is revised to require a respondent to respond to a request for information within 20 days of “notice” of the request, instead of within 20 days of “mailing” request.

References in Rule 78(b)(3)(B) to “the panelist” and “the panel” are replaced with “the committee” in regard to imposition of costs of deposition if a respondent does not respond.

References in Rule 78(b)(4) to the probable cause panelist are replaced with the chief bar counsel or the chair or vice-chair of the committee (relating to investigative subpoenas).

III. Conclusion

Petitioner requests this Court adopt the amendments to Rules 46-74, 75, 77, and 78, Rules of the Supreme Court, as set forth in Exhibit A.

RESPECTFULLY SUBMITTED this ____ day of May, 2010.

By ____/s/ David K. Byers_____
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